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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
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13 THIerno KANOUTE,

14 Petitioner,

15 v.

16 WARDEN, GOLDEN STATE ANNEX, *et al*,

17 Respondents.
18

Case No.: 1:25-CV-1694-TLN-DMC

**PETITIONER'S OBJECTIONS TO
FINDINGS AND
RECOMMENDATIONS**

19 Petitioner Thierno Kanoute, through counsel, respectfully submits the following
20 objections to the Magistrate Judge's Findings and Recommendations (ECF No. 21).

I. INTRODUCTION

21 The Findings and Recommendations should not be adopted as to Petitioner's prolonged
22 detention claim because they rest on a fundamental legal error: the application of the *Zadvydas*
23 post-final-order detention framework to a case governed by pre-final-order detention under 8
24 U.S.C. § 1226(c).

25 Petitioner does not challenge post-removal-period detention. He challenges prolonged
26 mandatory detention without any individualized bond hearing.

27 By mischaracterizing the claim and applying the wrong legal standard, the Findings and
28

1 Recommendations fail to address the core constitutional issue presented. The Findings effectively
2 permit prolonged civil detention without any individualized hearing, a result that raises serious
3 constitutional concerns under the Fifth Amendment.

4 **II. THE FINDINGS MISAPPLY ZADVDAS TO A § 1226(c) DETENTION CASE**

5 The Findings state: “Petitioner’s claim for relief is pursuant to *Zadvydas*.”

6 That is incorrect.

7 Petitioner is detained under § 1226(c), and removal proceedings remain pending. The
8 Supreme Court has made clear that *Zadvydas* governs post-final-order detention under § 1231,
9 not pre-final-order detention.

10 Petitioner’s claim—particularly as clarified in the Traverse—is that:

- 11 • His detention has become unreasonably prolonged, and
12 • He has been held without any bond hearing or individualized determination

13 The proper constitutional inquiry is therefore whether prolonged detention under §
14 1226(c), without procedural safeguards, violates due process.

15 The Findings apply the wrong test— “no significant likelihood of removal”—which is
16 irrelevant to this case.

17 **III. THE FINDINGS FAIL TO ADDRESS PROLONGED DETENTION UNDER**
18 **DEMORE AND ITS LIMITS**

19 The Findings rely on the continued validity of detention under § 1226(c), but do not
20 meaningfully address the duration of detention.

21 In *Demore v. Kim*, the Supreme Court upheld mandatory detention based on the premise
22 that such detention is brief, typically lasting about 90 days.

23 Here:

- 24 • Petitioner has been detained since August 13, 2025
25 • At the time of the Findings, detention exceeded seven months

26 This is not “brief.”

27 The Findings acknowledge the duration but conclude:

- 28 • detention is not in violation of due process

1 without engaging in any meaningful constitutional analysis of prolonged detention.

2 That omission is critical. The Ninth Circuit has recognized that civil detention must bear a
3 reasonable relation to its purpose and cannot become excessive in duration. See *Zadvydas v.*
4 *Davis*, 533 U.S. 678, 690 (2001).

5 **IV. PETITIONER HAS NEVER RECEIVED A BOND HEARING**

6 The Findings do not dispute that:

- 7 • Petitioner has never received a bond hearing
8 • No individualized determination of dangerousness or flight risk has been made

9 Instead, Respondents rely entirely on categorical detention. But due process does not
10 permit prolonged civil detention based solely on categorical assumptions.

11 At a minimum, once detention becomes prolonged, due process requires:

- 12 • An individualized hearing
13 • An opportunity to be heard
14 • A determination based on evidence

15 The Findings fail to address the constitutional significance of the complete absence of
16 process.

17 This is not a case where a bond hearing was provided and found insufficient. It is a case
18 where no hearing has ever occurred. The absence of any individualized process distinguishes this
19 case from those upholding detention at earlier stages and underscores the constitutional
20 deficiency in continued confinement.

21 The constitutional deficiency is further underscored under the familiar balancing test set
22 forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner's private interest—freedom from
23 physical restraint—is at its apex. The risk of erroneous deprivation is substantial where, as here,
24 detention has continued for over seven months without any individualized determination of
25 dangerousness or flight risk. The Government's interest in ensuring appearance and protecting the
26 community remains significant, but those interests do not justify continued detention without any
27 procedural safeguards. At a minimum, due process requires an individualized hearing once
28 detention becomes prolonged. The Findings do not engage in this analysis, and their failure to do

1 so further supports rejection of the recommendation as to Petitioner's detention claim.

2 **V. THE COURT SHOULD REJECT THE FINDINGS AND ORDER RELIEF**

3 Because the Findings apply the wrong legal framework and fail to address the
4 constitutional issue presented, they should not be adopted as to Petitioner's detention claim.

5 For these reasons, Petitioner respectfully requests that this Court:

- 6 1. Reject the Findings and Recommendations as to Petitioner's prolonged detention claim;
7 2. Grant habeas relief and order Petitioner's release; or, in the alternative,
8 3. Order that Petitioner receive a bond hearing within seven (7) days, at which the
9 Government bears the burden of proving by clear and convincing evidence that continued
10 detention is justified.

11 **VI. LIMITED OBJECTION**

12 Petitioner does not object to the Findings and Recommendations insofar as they grant
13 relief on the third-country removal claim.

14 **VII. CONCLUSION**

15 The Findings and Recommendations should not be adopted as to Petitioner's detention
16 claim because they apply the wrong legal standard and fail to address the constitutional limits on
17 prolonged mandatory detention. Petitioner preserves all arguments previously raised in the
18 Petition and Traverse.

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20 Date: April 17, 2026

Respectfully submitted,

21 /s/ Roger H. Ponce

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23 Attorney for Petitioner
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